MOTION FILED
APR 6 1992

(35) (34)

Nos. 91-744 and 91-902

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA,

Petitioner,

v.

ROBERT P. CASEY, Et Al,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF JAMES J. CROOK AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

JAMES J. CROOK
Attorney at Law
Suite 602
109 N. Oregon Street
One Texas Tower
El Paso, Texas 79901
(915) 544-4529
Fax: (915) 544-4563
Texas Bar No. 05111000

* Counsel of Record

BEST AVAILABLE COPY

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

NOS. 91-744 and 91-902

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA,

Petitioner,

v.

ROBERT P. CASEY, Et Al,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

MOTION FOR LEAVE TO FILE BRIEF OF JAMES J. CROOK AS *AMICUS CURIAE* SUPPORTING RESPONDENTS AND REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 37.2 of the Rules of this Court, Amicus James J. Crook respectfully moves the Court for leave to file the attached brief *amicus curiae* in support of Respondents. Counsel for Respondents, through his agent, Ms. Kate Mershimer, has replied to Movant's letter requesting consent to file his brief *amicus curiae* stating that, if given, consent would not

be forthcoming until early March of 1992 in order for Counsel to first review other such *amicus* briefs. Ms. Andrea Miller, agent for Ms. Kathryn Kolbert, Counsel for Petitioner, had given verbal consent to the filing of this brief *amicus curiae* of James J. Crook, however, suggested consent first be put in writing. This request was put in writing. Subsequently, Counsel for Petitioner, in a February 3, 1992 conversation with James J. Crook, clarified that verbal consent had not been given by her office and further stated that consent, if given, would not be forthcoming until March or April of 1992. No consent from Counsels for Petitioner and for Respondents has been received by Movant at this time. Movant admits to an early filing of this motion. In the event consent is subsequently received from Counsels for Petitioner and Respondents, a motion to disregard the Motion of James J. Crook For Leave to File Brief *Amicus Curiae* will be filed with dispatch.

INTEREST OF JAMES J. CROOK

James J. Crook is a citizen of the United States with acute ethical, philosophical, theological and humanitarian interests **and ordinary compassion** in the outcome of the Instant Case before this Honorable Court as the outcome may literally preserve or destroy the present and future lives and birthrights of millions of innocent, unborn American citizens and members of the human race. This prospective *amicus curiae* has previously sent **an essay** to each Justice of the United States Supreme Court on the abortion issue and is now proceeding with these previous perceptions plus additional insights in the form of a proposed *amicus curiae* brief so that the perceptions herein may possibly be considered as a helpful addition to the briefs filed and/or to be filed by the Respondents before this Honorable United States Supreme Court.

THE QUESTION PRESENTED IN THE INSTANT CASE

The question presented in the Instant Case is a matter of continuing importance to James J. Crook. Briefly stated, the question is whether **the notion of the sacredness of human existence, *at all stages***, should be **entrenched** philosophically in our Society and established as a legal doctrine with reference to the **fetal rights** of the **innocent**, unborn, **living** person as an extension of and an addition to the presently evolving Civil Rights Movement in this Nation, thereby **entitling this class of people to the full and *equal protection of the law*.**

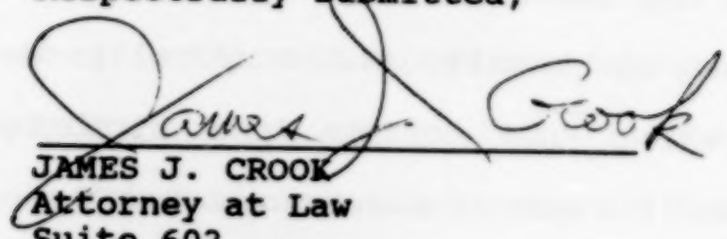
The interest of James J. Crook is thus predicated on the substantial and *far-reaching* consequences that any decision in the Instant Case may have regarding any limitation, placed by legal precedent or fiction, on the dimension of innocent human existence. As a side editorial, the long lists of childless parents **desperately** seeking to adopt unwanted children has always been an available option for the

pregnant, pro-choice female preferring not to keep the unborn child, without, in our society, having to legally and corporally destroy, by abortion, the notions and birthright of a person's **right of existence**. For these reasons, James J. Crook requests an opportunity to present his views on the Instant Case before this Court by Brief *Amicus Curiae* and oral argument.

CONCLUSION

For the above stated reasons, James J. Crook respectfully urges the Court to grant this motion for leave to file the accompanying *amicus curiae* brief in the Instant Case in support of the position of the Respondents.

Respectfully submitted,



JAMES J. CROOK
Attorney at Law
Suite 602
109 N. Oregon Street
One Texas Tower
El Paso, Texas 79901
(915) 544-4529
Fax: (915) 544-4563
Texas Bar No. 05111000

Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

THE QUESTION PRESENTED 2

SUMMARY OF ARGUMENT 2

ARGUMENT 3

A. INTRODUCTION 3

B. ANALYSIS OF THE 1973 *ROE v. WADE* DECISION 4

C. RIGHT TO PRIVACY AS IRRELEVANT TO NOTIONS OF THE BEGINNING OF HUMAN LIFE ENTITLED TO FULL AND EQUAL PROTECTION OF THE LAWS 5

D. THE FALLACY OF THE "VIABILITY" TEST FICTION AS THE STARTING POINT TO ACTIVATE EQUAL PROTECTION OF THE LAW AND THE RIGHT TO EXISTENCE OF THE LIVING, UNBORN HUMAN BEING 16

E. *ROE v. WADE* AS INTRODUCTION OF ARBITRARINESS INTO THE LAW 21

F. AN ENDANGERMENT OF SOCIETY AND CIVILIZATION RESULTED FROM THE *ROE v. WADE* DECISION 26

CONCLUSION 31

TABLE OF AUTHORITIES

CASES: **Page**

Jane Roe, et al v. Henry Wade,
410 U.S. 113, 35 L.Ed.2d 147;
93 S.Ct. 705, reh. den.,
410 U.S. 959, 35 L.Ed.2d
694, 93 S. Ct. 1409 3

CONSTITUTIONAL PROVISIONS:

Constitutional Law,
Section 82 4

STATUTES:

Texas R. Civil Statutes,
Article 1196 5

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

Nos. 91-744 and 91-902

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA,

Petitioner,

v.

ROBERT P. CASEY, Et Al,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF OF *AMICUS CURIAE* JAMES J. CROOK IN SUPPORT OF RESPONDENTS

INTEREST OF THE *AMICUS CURIAE*

Axiom: "Either innocent human existence is sacred or it is not."

The interest of *amicus curiae* James J. Crook, as set out in the motion accompanying this brief, is an ethical, philosophical and theological concern with reference to the legal right to human existence, **especially of the innocent, living, nonviable, unborn person.** The

amicus curiae brief is intended, in a helpful sense, to present a clear direction and **simple overview** of the basic social issues inherent in the Instant Case without an in-depth involvement in the apparent **quagmire of legalities** which has presently brought this case before the United States Supreme Court.

THE QUESTION PRESENTED

Whether the laws of the Federal Government, the States, counties and municipalities of the United States of America can Constitutionally place **any legal limits**, or arbitrary limits, upon the right of existence of **innocent, unborn,** ***living*** **human beings**, regardless of the individual's particular stage of existence or development **prior to birth**, including the non-viable.

SUMMARY OF ARGUMENT

The sacredness of human existence and legality of innocent human beings, at any stage,

including the unborn, nonviable, living person, cannot be denied, for to do so would be to fracture the fundamental notions and basic principles of civilization.

ARGUMENT

A. Introduction

In 1973, the Supreme Court of the United States, in the case of *Jane Roe v. Henry Wade*, 410 U.S. 113, 35 L.Ed.2d 147, 93 S.Ct. 705, reh. den., 410 U.S. 959, 35 L.Ed.2d 694, 93 S.Ct. 1409, reversed an 1854 anti-abortion law in Texas, of which similar laws existed in the majority of the States, that had **endured** the wisdom of time and intellectual and scientific contemplation for over a century. The Opinion written for the Majority Court by Justice Blackmun struck down the Texas law and declared that a law prohibiting abortion at any stage violated the Due Process Clause of the Fourteenth Amendment of the *United States Constitution* regarding one's **liberty** which, the

Opinion declared, included a woman's **qualified right to choose to end a pregnancy**, but that the right was **not** absolute. Justice Blackmun further stated that subsequent to the first trimester of pregnancy, States could only **regulate** the method of abortion, but not stop it. And finally, the Opinion stated that **only** after the living child reached viability (the ability to live, grow, and develop *on its own*) could the States proscribe abortion.

B. **Analysis of The 1973 *Roe v. Wade* Decision**

The Opinion restated Constitutional Law, Section 82, which, in defining **person**, stated "the word 'person' as in the Fourteenth Amendment **does not include the unborn.**" However, the Opinion stated that **"the State has a legitimate interest in protecting the potentiality of human life which interest grows and reaches a *compelling* point."** The High Court then, recounting the ancient history of abortion law which, in an inordinate sense, occupies

almost half the Opinion, **appeared** to search for **direction** or justification for **spreading** the responsibility for its **monumental landmark pro-abortion decision.** The Supreme Court, in its 1973 Opinion, **concluded** that viability of the unborn child may not be reached until the twenty-sixth or twenty-eighth week of pregnancy. The absolute-first-trimester right to abortion was medically grounded on the rhetoric that abortion was **safer** to the mother versus the second or third trimester of pregnancy, without any mention of the rights of the unborn child.

C. **Right to Privacy as Irrelevant to Notions of the Beginning of Human Life Entitled to Full and Equal Protection of the Law**

When the dust cleared, the United States Supreme Court, referring to *Roe v. Wade*, stated that Article 1196 of the Texas Code proscribing abortion at any stage "must fall as Unconstitutional." In reading the text of the Opinion, it appears that the right of privacy interpreted as a (remote) dimension of

"liberty," as protected by the Fourteenth Amendment's Due Process Clause, was the legal hook on which the Supreme Court hung the hat of its Opinion, but in reality, **the right of privacy appeared to be irrelevant to pregnancy, notions of the *beginning* of human life, and the medical, surgical procedure called abortion.** Further, the Court's adoption of Constitutional Law, Section 82's definition of a person as "not including the unborn," is an incongruity, and apparently anarchistic now **as the 1973 Landmark Opinion itself recognized the unborn person as a person past the viability stage** of pregnancy, legally protected, thereby legally and historically **activating** the Civil Rights of the Unborn Person in that instance, under the laws of the United States, entitling the **unborn** person to "Equal Protection Of The Law."

The Opinion further appears to be incongruous when declaring that the State has a "legitimate interest in protecting the **potentiality** of human life ... which interest

grows and reaches a compelling point" as if to declare that a four-to-six-month old or younger, nonviable, alive, **unborn human being** has **no potentiality** for human life, an arbitrary and unreasonable exercise of logic and reason, and an indulging in a scientific fantasy divorced from reality when considering the **very** healthy and "kicking", normal, four to six month old child **alive and well** in the womb, and the younger child with a heartbeat readily discernible, **a reality** to which almost **every** woman who has given birth can attest. This is an **arbitrary fiction,** at best.

The nonviable standard appears to be shallow and without substance. **Abortion is the real limit on the potentiality of human life and not nonviability,** just as homicide is the limiting of the potentiality of human life **beyond** the viability or birth stage of a human being. Within the framework of this concept and perception and aside from illusion and fiction, abortion and homicide are true synonyms, as they

both describe and define the actual "killing" of a human being.

To offer an example regarding the potentiality for human life, when a husband determines that his wife is pregnant, is the child not real and are their joys based on a fiction and not the existence of a real human life? If based on a fiction, what is the reality basis of the couple's jubilant acknowledgment of the child?

It appears that the more realistic, **honest** and non fictitious standard to measure the "movement" of the **potentiality** for human life should be that **the potentiality for human life commences at the Instant of Conception.** This appears to be in conformity with one of the definitions in Webster's New Collegiate Dictionary defining viability as "capable of growing or developing **-seeds, eggs.**" A human pregnancy that **can** result in the birth of a human being-short of a **fiction** admitted to be **arbitrarily created** regarding the "moment" of

potentiality for human life - is the **true** test of the potentiality of human life. The arbitrary selection of when human life was legally entitled to begin, short of conception, was an exercise in incredible insensitivity and arrogance and so monumental a gesture that it assumed a **deity dimension** in its far-reaching results since the 1973 Opinion which ended the existence of literally millions of unborn, **living** people tantamount to a United States ***doctrine of legal genocide of the innocent,*** probably the **first** such instance in American history. The awesome result of this arbitrary and **nonvisionary nonviability standard,** admittedly to have been whimsically "plucked out of the air," has been nothing less than inconceivable and staggering to the imagination, if not mind-numbing. ***The issue presently before the Court in magnitude is probably the most profound issue in human history*** and must be dealt with **correctly** to avoid a continuing tragedy of unimaginable proportions.

Considering the pro-abortion rhetoric, it is only **the insensitive and unenlightened**, for personal convenience and personal comfort's sake alone, **regardless of a concern for the rights of other persons**, including the living, **unborn** person, viable and nonviable alike, who are **hypocritical** and less than honest or, in a mitigating sense, their "senses" are **truly** asleep in this instance. In considering these people, **their pro-abortion rhetoric - staunchly** refusing to recognize the biological reality of the unborn, living and existing person inside of a woman - **is merely a *convenient disguise* designed to obscure biological reality in order to socially and psychologically justify the homicide referred to as abortion** which was recently legalized by the 1973 Decision.

Even with the pro-choice individuals, however, most of them among us are not to be faulted as their vision is usually blinded and has been obscured by the pro-abortion rhetoric. If they could obtain a **clear vision**, beyond the

rhetoric, of what they are really, biologically engaged in regarding abortion, their natural, **instinctive and ordinary human compassion**, it is felt, would prevent them from doing so. As with many social causes **and social ills**, the problem again and almost invariably seems to be one of vision or the lack thereof. **Perception carved by faulty rhetoric *becomes* one's reality.**

Regarding pregnancy and abortion as with notions of one's **limited personal rights** to one's own comfort, the **critical misperception** occurs when the notion becomes one in which we are dealing with one person and not ***two separate people,*** being the mother and the unborn **living** child nourishing itself from its mother's "life support system" **within the womb** much the same as the identical living child **subsequently** nourishing itself from its mother's breasts **outside the womb.**

The reality of the existence of two separate people becomes a clear and a most compelling biological scientific fact, divorced

from theory, when realizing that the fertilized ovum of a mother can be taken from her body **and transplanted** into another woman's body **and achieve birth**. The scientific reality, hence, becomes undeniable that the mother is ***just*** **the life support system** to the separate person, the unborn, existing individual inside of her, and nothing more. From the successful transplantation procedure now established by **medical science**, it is a biological fact that the mother and the child are not one in the same but two persons. This is a necessary and critical reality and perception and must be recognized and acknowledged in order to **substantively** consider and accurately assess, **with clear vision**, the socially profound issue now before this Most Honorable Court. Regarding the abortion issue, our limitation is only the limits of our vision. Scientific proof of the fertilized ovum and the mother being **two persons** rather than one appears to dispel the **fiction pushers'** argument that the nonviable child is

not really a human being. In the face of current medical science, that "convenient", tongue-in-cheek fiction now has as much persuasive force as convincing one that an apple is really a doorknob, that black is white, and that a nonviable, unborn, **living** human being is really a kangaroo. The fact that Medical Science is now removing organs and parts from unborn, nonviable people for transplantation to born people, indicates the unborn, nonviable person is very much a living human being. At some compelling point, the normal rational mind repulses such fantasies so divorced from reality.

It appears that **society's safe solution and focus, whether it be from individual preference or population control, is the "*prevention*" of new human existence through education and medical science, rather than its *extermination*.**

Even if one's personal comfort and privacy were relevant to abortion, for argument's sake,

there are also mothers whose privacy and personal comfort are limited and compromised by a child **already born**. Just as the mother's right to her personal comforts cannot exist as a **criterion** to limit the existence or legal rights of a one-week-old, living person, her choice of her limited right to her personal comfort similarly cannot be a criterion for limiting the existence and legal rights of the unborn, **living, viable or nonviable** person either. Sometimes perception for many of us is obscured by rhetoric and passion and we need to "blink" back into reality. As an axiom, the preference of one's limited right to one's own personal comforts cannot be a sound reason for limiting or destroying the legal rights or existence of another human being. Such would be a dangerous, legal precedent, indeed. The only separating difference between the born and the unborn person is the shallow wall of the womb. Aside from that thin separating membrane, **both** young people **are alive** with one living in a ***water***

world and the other living in a ***world of air.***

The only exception to abortion should be when it places the life of the mother at risk. Abortion, **even in a case of rape**, should not be permissible because the child is living. The focus should be upon the living child's right to existence. Regarding the victim mother, this is one of the tragedies that we have to absorb, among others, for living in an imperfect world. The justification here is that Society obtains a very strong grip on the control problem invited when the law leaves even a small crack in the door which could endanger these innocent, unborn people. As a result, **Society is safer** by retaining the integrity of the principle of a reverence for all human existence, without exception. The merit of this view becomes clearer when considering that an innocent person involved in an automobile collision and losing a kidney could not take the kidney of another human being in existence, born or unborn and viable or nonviable. For this principal of

reverence to continue to protect Society, the focus must remain on the unborn living person's right to existence and not the victim mother. To elucidate, if the rape victim's unborn child was beyond the viability stage, even under the present law, the mother could not abort the child. For a permanent, effective solution to protect all members of society without exception, the principle must remain fully intact.

D. **The Fallacy of the "Viability" Test Fiction as a Starting Point to Activate Equal Protection of The Law and the Right to Existence of the Living, Unborn Human Being**

Another one of the definitions of viability in ***Webster's New Collegiate Dictionary*** **is "capable of living".** An in-depth consideration of the logic of the viability stage as the foundation upon which to activate the legal rights of the living, unborn person, makes it appear to be a **weak fiction at best.** Regarding the soundness

of this viability doctrine to justify prenatal genocide, are not the crippled among us, the individual entombed in an iron lung, the person on life support systems, the quadraplegics, the advanced infirm, the retarded, the paralyzed, and the insane nonviable? Does this mean that the nonviable persons among us are not entitled to any legal rights and are to be **stripped** of the birth right of existence? **Wouldn't this notion be a backslide of civilization into the jungle of our "beginnings" and a regression of social evolution?** Within this logical analysis, the legal validity of the nonviability test, regarding prenatal human life, **collapses.**

Stretching further now, substantively considering the **entire concept of viability,** since human **viability,** in some instances, is further **contingent upon new technology** such as "Preemies", prematurely born babies, whose survival is contingent upon neonatally, and astronauts who would be nonviable in space except for the same technological life

supporting systems, are these people truly nonviable also? Does this mean, in principle, that the nonviable people among us are disenfranchised from the concept of Equal Protection of The Law? **Regarding the worthiness of the nonviable**, one of the greatest astronomers of all time, a young American, still living, can barely move a muscle and, in a physical sense, is **absolutely nonviable**. If these nonviable persons mentioned are **not** legally disenfranchised based on nonviability which appears to be the case, then wouldn't it be **discriminatory**, arbitrary, and unreasonable to disenfranchise the nonviable, prenatal, **living** human being **based on nonviability**? Such a concept and notion regarding viability, in view of the above comments, appears to be patently unjust, arbitrary and grounded in the **illogical** as Justice Rehnquist pointed out in his Dissent.

A society that legally disenfranchises the nonviable individuals would be a cosmetic,

nonsubstantive, arbitrary and **unsafe** society, indeed. Even the notions of abortion due to preferred gender or abortion based on inconclusive amniocentesis tests - which is **whimsical**, genetic guessing especially in the degree of imperfection, **if any**, due to the vain parents who will only allow the life of a perfect child if there ever was such a thing, which again invites the same control problem referencing the corrupt among us - appear to be shallow and dangerous thinking. A young, popular, teenage actor in a current, successful television series wouldn't be here if his life and right to existence rested on a summary amniocentesis test. These social notions contain cosmetic treachery and represent a reappearance of that familiar social cancer - an absence of a reverence for human life - much the same as Adolf Hitler's notion of a world that only had room for an Aryan Race of perfect, blonde-haired and blue-eyed people. The only ethical, legal axiom is: *There is room for the*

imperfect individuals among us. This includes the born and unborn, viable and nonviable, alike. **The imperfect have their place.** If this is not true, then it cannot be said that anyone among us is legally safe for long in our ever changing society. **The civilized notion of the sacredness of human existence is the permanent anchor for a safe society in perilous times and in peaceful waters, as well.**

For the reasons stated, it is clear that the nonviability test cannot stand as a sound legal basis and logical justification upon which to deny Equal Protection of The Law and the **right of existence** to the unborn, **nonviable, living** human being. **In conclusion, *viability appears to be logically irrelevant to the right to human existence of the unborn person, non-viable and viable, alike***. If this is the case, then when do the rights of the unborn, **living** person begin? This question must be answered mercifully soon to deliver our Society from confusion, vexation, **anguish** and turbulence. It

appears there is and has always been **only one** obvious and same answer to this question. On revisiting the definition of viability as used by the Court in *Roe v. Wade* as **"the ability to live, grow, and develop on its own"**, can it even be accurately stated that a newborn person also qualifies under this viability standard? Can a newborn person really live and develop *on its own*? If not ultimately cared for by others, wouldn't the newborn child *also* die within a few days? Isn't the **newborn child**, hence by definition and analysis, non-viable also? In this sense, even a child **after having achieved birth**, does not qualify to the right of existence under the **ill-conceived, non-relevant** viability standard to activate the Civil Rights of the unborn, living, viable person. This arbitrary, nonviability fiction, more and more, appears to be *a quick fix* to the very perplexing abortion issue, indicating that vision on this profound issue has been **most difficult *and slow in coming***.

E. ***Roe v. Wade* As Introduction Of Arbitrariness Into The law**

It appears that **the first-trimester-absolute-standard-of-legally-allowing-the-killing-of-the-fetus (the unborn but *alive* child) rule** - (based, in a legally "stretching" sense, on a woman's right of privacy and an extension of that standard until the unborn child is six to six-and-a-half months old, declaring that, prior to that time, there is no **potential for human life**) - even by medical, scientific and layman standards, ***appears to have been "plucked out of the air,"*** as Supreme Court Justice Blackmun, who *authored* that **arbitrary standard**, according to recent news releases, *admitted to be the case*. Justice Rehnquist's dissent attacking the relevancy, logic, and soundness of the **legal basis** of the Court's **landmark decision** as involving the right to privacy, **appears to have merit.**

Even if the definition of liberty were extended to include the right to privacy, the

right is not an **unlimited** right as an unlimited freedom is tantamount to anarchy, because the right to privacy, or any right, **does not include the right to do whatever one chooses**, and it, like all rights, ends where the rights of another **person**, ***legally recognized***, begin. The very notion of civilization, by necessity, is **the concept of limited rights.**

For the protection of the mutual rights of everyone, one must, on occasion, suffer the discomfort of limited personal comforts and freedoms in order for the rest of society to be able to live in harmony. In this respect, the rights of the populace supersedes and are at a higher priority than one's right to his or her own individual, personal comfort. As an axiom, **one's preference for one's limited right to one's personal comforts cannot be allowed to compromise the legal rights of another person under *any* circumstances,** otherwise, the concepts of Due Process of Law and Equal Protection of the Law are only illusions. It is submitted

that this axiom also applies to the unborn, living, viable and nonviable person.

The **"moment" of potentiality of human life** seems to be the question before the United States Supreme Court in reconsidering *Roe v. Wade* as regards the 1973 legal precedent which allows the legal abortion (**extermination**) of unborn, nonviable, *alive* human beings. When *do* and when *should* the legal rights of the unborn human being begin?

It appears that **the new minority** group, now testing its legal rights in America's continuing **civil rights movement**, is *our* living, unborn people. It further appears that the new Subcategory of America's Civil Rights Movement now evolving in this Country is **fetal rights**. The thesis and **strong caveat** of this writer is that if the time, **legalistically** speaking, that an unborn person **or any person** can be destroyed, was **arbitrarily** selected or is arbitrarily selected, it can be arbitrarily selected **again** *and extended*, for argument's sake, conceivably

and alarmingly, to the *full length of pregnancy* and beyond pregnancy to the point of including the **infirm**, the **elderly**, the **retarded**, the **insane**, the **crippled** and the **genetically non-preferred**, depending upon the sentiment of the public and the political pressures of the times. Why is this more possibility than fantasy? It is **because the basic building block of civilization has been assaulted in the 1973 landmark decision** legalizing abortion. That building block is **a reverence for human life.**

Regarding a reverence for human life and historically speaking, once there is a legal "crack in the door", an **expansion** of the law usually follows as the crack lends itself to *multiple* future, legal interpretations by the Courts and, hence, **civilization itself is no longer safe**, as can be witnessed by the genocide in Cambodia and Nazi Germany **where the basic social necessity of a reverence for human life, without exception,** *appeared to be absent or misperceived*. The African-Americans experienced

this misperception and **irreverence** in this Country up until the recent Mid-Sixties, indicating that ***we, as a Society, are not far removed from this "social cancer"***, and **moral confidence** at the present time is not justified.

To be a **solid axiom**, either human existence is recognized as sacred or, legally speaking, it is not. ***There is no in-between.*** To rest the destruction of unborn, alive human beings - **especially the nonviable** due to the absence of logic supporting the viability extermination doctrine - on **an arbitrary standard**, admittedly "plucked out of the air" is, undeniably and logically, to introduce **acceptable arbitrariness** into the law. *In this event, the law itself is no longer safe.* This is exactly what happened in *Roe v. Wade* - an awkward and nervous position for the Champion of Due Process of Law in which to find itself during its up and coming **reconsideration** and future possible considerations of the *soundness* of its 1973 Decision legalizing abortion.

F. **An Endangerment of Society and Civilization Resulted from the *Roe v. Wade* Decision**

For argument's sake, **even if** there is no expansion of the non-reverence-for-human-life (at all stages) legal crack in the door, established in 1973 by the United States Supreme Court in the legalization of abortion, the arbitrary law is *unsafe* due to the **control problem** inherent therein. Who is to control the fraud invited by the 1973 Decision when the frustrated mother and fee-hungry doctor fabricate the eight or nine month old, unborn child to be under six months old and legally nonviable when aborted? Further, who is or would be inquiring? **To emphasize the *alarming seriousness* of this very real control problem**, amply documented by State Prosecutors, even under the **present law** legalizing abortion, using the-26-to-28-week-of-pregnancy viability standard, ***mass murder is and will be continually occurring*** because of this mother/physician corruption, previously mentioned. **The law is**

impotent to protect these human lives because ***"Pandora's Box" has been opened.*** There is no control and, historically, for the safety of society, when there is no control, the courts of this Country have always left the door slammed shut to those areas of the law in order to avoid the legal uncertainty that usually follows. The 1973 Landmark Decision unwisely departed from this major, fundamental legal doctrine and blew the top off of the United States Supreme Court's own legal Pandora's Box.

In addition, because the lack of control and inherent fraud, aforementioned, invite the killing of significant numbers of living, unborn human beings **past** the viability stage, human decency mandates that the Courts find a solution to where these **viable** unborn lives will be protected under our laws. Moral compulsion requires that the United States Supreme Court, upon whom the ultimate responsibility for these lives rests, engage the control problem in a way that will spare these viable and legally

recognized lives. There is only **one sure way** to achieve the control of this problem and that is the proscription of abortion.

The storm of confusion and the uncertainty of the law will continue for decades, if not generations, until all the pieces of what is left of the basic, civilized notion and concept of the sacredness of human existence, at all stages, born and unborn, viable and nonviable, are reaffirmed and put back in this legal "pandora's box". Thus, the lid will be slammed shut **permanently** by the United States Supreme Court *to any notion* of the non-sacredness of innocent human existence and an absence of a reverence for **any** human life being dangerously injected into our laws.

The Past has indicated a historical yo-yo of this **ancient issue** regarding the beginning of human life with the result that many past and present societies continue in uncertainty and confusion in their laws. The abortion-issue-historical yo-yo will **continue to vexate**

societies until a basic axiom is finally laid down. **The only irrefutable and unassailable axiom that seems to qualify to end the legal uncertainty and to render society *safe* is the social and legal recognition of the sacredness of human existence *at all stages* from its Inception.** It is assumed that this axiom would have more validity, certainly, with reference to **innocent human existence.** Only at this time will this vexating crack in the door be *slammed shut for good* for all future generations, and only then will the uncertainty in the law be removed, and a **reverence** for human existence, born and unborn, **viable and nonviable**, be established and anchored as a legal doctrine in the United States of America, and a **model axiom** created for other civilizations to emulate. This would be ***a Noble Act,*** indeed, and **an advancement of civilization itself.**

In terms of *birth control* and *population control*, **"prevention"**, to repeat, rather than **"extermination"** appears to be the most sensible,

safe, wholesome and only ethical **path to the solution** by a decent and guilt-free society.

As stated, it appears in the United States that another Subchapter of the American Civil Rights Movement has been born for **another minority** regarding the civil rights of the tens of millions of *innocent*, very much **alive** but unborn human beings - ***the fetal rights movement.***

At this moment, these *tens of millions* of innocent, **living**, unborn human beings, viable and nonviable alike, and *hundreds of millions* of future, unborn, living human beings **have no one truly protecting their lives** and have no Legal Guardian or Champion of their legal rights and rights to existence and safety, especially considering the control problem **invited** by the inherent fraud, except possibly the current Supreme Court Justices of the Highest Court in our Land. This is an **awesome, *enormous*, unenviable and overwhelming responsibility**, indeed.

CONCLUSION

For the reasons stated, the United States Supreme Court's decision in *Roe v. Wade* **must be reversed** and a United States citizen's legal right to abortion must be **outlawed in all instances** - at home *and abroad*, to prevent circumvention of the law, a civil rights violation against **an innocent, living, unborn person** entitled to the full and **equal protection of the law**, and an attack against humanity, and to insure the **safety** of all members of society - to re-entrench the axiom that ***the notion of the sacredness of human "existence" is the cornerstone of civilization.***

Respectfully submitted,

JAMES J. CROOK
Attorney at Law
Suite 602
109 N. Oregon Street
One Texas Tower
El Paso, Texas 79901
(915) 544-4529
Fax: (915) 544-4563
Texas Bar No. 05111000

Amicus Curiae

CERTIFICATE OF SERVICE

I, James J. Crook, certify that a true and correct copy of the foregoing Brief *Amicus Curiae* was mailed, hand delivered or faxed to all Counsel of Record on this the 13th day of February, 1992.

JAMES J. CROOK

CERTIFICATE OF MAILING

I hereby certify, based upon my personal knowledge of such, that the original and 40 copies of the foregoing Motion For Leave To File Brief and Brief of James J. Crook as Amicus Curiae Supporting Respondents were deposited in a United States mailbox, with first-class postage prepaid, within the permitted time, on February 13th, 1992.

JAMES J. CROOK

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned notary public, on this the 13th day of February, 1992.

NOTARY PUBLIC in and for the State of Texas

My Commission Expires:

ANA IRENE STEFFEN
MY COMMISSION EXPIRES
April 23, 1994